

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Special Access for Price Cap Local)	WC Docket No. 05-25
Exchange Carriers:)	
)	
AT&T Corporation Petition for Rulemaking)	RM-10593
to Reform Regulation of Incumbent Local)	
Exchange Carrier Rates for Interstate)	
Special Access Services)	

REPLY COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS

Alaska Communications Systems (“ACS”)¹ hereby submits this reply to comments in response to Sections IV.A and C of the Commission’s December 2012 *Further Notice of Proposed Rulemaking* in the above-captioned proceeding (the “*Special Access FNPRM*”).²

I. PERFECT COMPETITION IS NOT A PREREQUISITE TO PRICING FLEXIBILITY

In determining whether and how to decrease regulation it is appropriate to evaluate the economics of the marketplace, and to employ regulatory balance. The Commission has witnessed the transformation of the telecommunications marketplace from the siloed monopolies of the past to a profusion of diverse technologies and ever-increasing competition. This experience has permitted the Commission gradually to relax regulation in the market for high-capacity, special access services even while competition continues to evolve. The Commission

¹ In these comments, ACS signifies the four incumbent local exchange carrier (“ILEC”) subsidiaries of Alaska Communications Systems Group, Inc.: ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC.

² *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order and Further Notice of Rulemaking, 27 FCC Rcd 16318 (2012) (“*Special Access FNPRM*”).

has never made perfect competition a prerequisite to regulatory relief such as pricing flexibility.³ Deregulation can help promote even nascent competition.⁴ Therefore, appropriate regulation requires not only a comprehensive evaluation of the market – supply and demand for the services and facilities offered by ILECs and competitive providers – but also reasoned regulatory analysis and predictive skills to ensure that consumers continue to receive the maximum benefit of competition in the special access market.

AT&T rightly observes that pricing flexibility is only a first step to further deregulation and it is an appropriate step to spur on competition whenever competitors have either a significant presence or the ability to enter the market (that is, when market barriers have been lowered).⁵ ACS agrees. Both this Commission and the Regulatory Commission of Alaska have

³ The Commission’s historical knowledge, reasoned analysis, and predictive capabilities have enabled the Commission to see the potential competitive benefits of pricing flexibility as well as to recognize that in implementing pricing flexibility there may be “some cases [in which] special access prices might rise ‘because [its] rules may have required incumbent LECs to price access services below cost.’” *See Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Comments of Verizon and Verizon Wireless, WC Docket No. 05-25, RM-10593, at 27 (filed Feb. 11, 2013) (“Verizon Comments”), quoting *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, ¶ 155 (1999) (“*Pricing Flexibility Order*”).

⁴ CenturyLink observes that the “Commission’s deregulatory approach to optical and packetized services has triggered additional growth of these services, rendering high-capacity wholesale and enterprise services even more competitive today. At least 30 providers now offer enterprise broadband services nationally or to large areas of the country. ... [E]very major cable provider now competes aggressively for enterprise and wholesale customers. ... [W]ireless providers are capitalizing on new technologies to offer wireless wholesale and enterprise services. ... [E]ntities relying on unbundled DS0 loops – available ubiquitously at TELRIC rates – are providing ‘Ethernet over copper,’ or ‘EoC’ to high-volume enterprise customers not requiring OCn-level speeds.” *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Comments of CenturyLink, Inc., WC Docket No. 05-25, RM-10593, at 19-20 (filed Feb. 11, 2013) (“CenturyLink Comments”).

⁵ *See Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate*

acknowledged that market entry barriers have been lowered in Alaska.⁶ If not perfect, competition in Alaska is well established, with the ubiquitous presence of a statewide cable, broadband and telecommunications provider as competitor to incumbent local exchange carriers (“ILECs”). As a result, pricing flexibility is not only an appropriate first step in Alaska, but it is in fact necessary to maintain competition. ILECs such as ACS have become the competitive challenger for many special access contracts. It is ACS, not the CLECs, who are disadvantaged due to the very limited nature of the pricing flexibility that has been granted thus far. A customer seeking statewide pricing for special access services does not yet benefit from unfettered price competition between ACS and its rival because ACS has been granted flexibility in only some parts of its service territories. For ACS to compete effectively, it requires pricing

Special Access Services, Comments of AT&T, WC Docket No. 05-25, RM-10593, at 12 (filed Feb. 11, 2013) (“AT&T Comments”) (“[t]he goal of pricing flexibility has never been to wait until ‘perfect’ competition existed everywhere; rather the rules recognize that substantial relief is ‘warranted’ when competitors merely have a ‘significant market presence.’” AT&T Comments at 12, citing *Pricing Flexibility Order*, ¶ 142.

⁶ See *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 1958, ¶ 20 (2007) (finding sufficient facilities-based competition to grant in part forbearance from obligations to provide unbundled access to loop, copper subloop, and transport elements in certain wire centers in Anchorage); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 16304, ¶¶ 3 and 18 (2007) (finding that ACS faces “extraordinary facilities-based competition in the Anchorage market” and granting in part forbearance from “dominant carrier rate-of-return, tariffing, discontinuance, and transfer of control regulations for interstate switched access services” and “forbearance relief for mass market broadband Internet access transmission services”); *Commission Review of Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies and Competition in Telecommunications*, Order Adopting Regulations, RCA Docket No. R-03-03 (June 22, 2005) (finding by the Regulatory Commission of Alaska that the retail local exchange market in Anchorage is competitive and adopting regulations under which ACS is considered non-dominant).

flexibility not only in specific MSAs, but statewide.⁷ Conversely, if the Commission curtails pricing flexibility, customers will not benefit from the competition that has developed thus far. Accordingly, special access services in Alaska should be subject to greater, not less, pricing flexibility, so as to benefit consumers with lower prices and greater innovation.

II. WHERE COMPETITION EXISTS, CONTINUED ILEC REGULATION IS USED BY COMPETITORS TO THEIR OWN ADVANTAGE, AND TO THE DETRIMENT OF CONSUMERS

It is expected market behavior that a competitive local exchange carrier (“CLEC”) would take advantage of an ILEC’s regulatory constraints to the extent possible in order to extract economic advantage. This is why the Commission’s policies have favored price deregulation whenever possible, knowing that it would lead to lower, not higher, prices for end-users. In this proceeding, competitors of the ILECS allege generally that price cap carriers have market power and that they must therefore be subject to intrusive regulation. It is natural for competitors to assert such claims in the hope of keeping ILECs under burdensome obligations to deploy facilities upon request in high-cost markets, and to prevent vigorous price competition for customer contracts for special access services in markets where competitive cherry-picking is profitable. The effect of deregulation in ACS’s markets, however, has been declining special access revenues for ACS and greater market share for the CLECs. If prices were going up, it stands to reason that CLECs would take competitive advantage. It must be that what they fear is pricing going *down*. This may be a problem for individual competitors, but it is a benefit for consumers.

Critics urging a retreat from the benefits of regulatory relaxation have not provided

⁷ See *Petition of ACS of Anchorage, Inc., ACS of Alaska, Inc., and ACS of Fairbanks, Inc. for Pricing Flexibility Pursuant to Sections 69.709 and 69.711 of the Commission’s Rules*, Order, 25 FCC Rcd 7128 (2010) (granting pricing flexibility for the Anchorage MSA, the Juneau non-MSA area, and the Fairbanks MSA).

objective evidence of either entry barriers in the special access market or any viable explanation why competitors cannot negotiate with customers when ILEC term contracts come up for renewal. In the absence of empirical evidence, these claims should not form the basis of FCC policy. ACS is not aware of any such claims aimed at the Alaska market, nor should the Commission expect to find any such problems, given the vigorous competition there.

CenturyLink observes that “only comprehensive data can provide the basis for a reliable market analysis, and only a mandatory inquiry can ensure accurate self-reporting. The sheer scope and variety of entities actively competing in the high-capacity market underscore the need for the Commission to conduct its data collection in the broadest and most comprehensive fashion possible.”⁸ To the extent there is clear evidence of market failure in specific areas, ACS agrees with CenturyLink that the data collection must be mandatory for all participants in the high-capacity market in those areas, including those who compete with ILECs.⁹ However, there is no need to waste precious carrier resources collecting data where no credible cause for concern has been presented. Notably, collecting data for the markets served by ACS would only show the Commission what is already evident, that there is no market failure for high-capacity services and that competitive choices are being provided in response to customer demand.

The definition of market power is the ability to raise prices or constrain output without attracting competitors and losing market share. Analysis of the Alaska market will demonstrate that nothing prevents competitors from offering special access services at rates competitive with those offered by ILECs. If anything, as noted above, it is the ACS ILECs who need greater flexibility to compete with pricing packages that their competitors are free to offer. If anyone

⁸ See CenturyLink Comments at 7.

⁹ See CenturyLink Comments at 7.

enjoys market power in Alaska, it is the cable provider, not the ILEC. This is a textbook example of failure to deregulate holding back competition, to the disadvantage of consumers, rather than to their benefit. When all carriers are permitted to freely respond to customer demand, consumers reap the maximum benefits of competition in pricing and innovation.

III. SPECIAL ACCESS CUSTOMERS ARE SAVVY USERS OF ADVANCED TECHNOLOGIES AND SKILLED NEGOTIATORS

There is no mistaking that customers of special access services are savvy users of advanced technologies. They are accustomed to seeking competitive bids for their business and negotiating complex, customized service agreements. The record also is replete with examples of innovation and price competition in the special access market, from competitive fiber providers, cable-broadband providers, and fixed wireless providers using Ethernet,¹⁰ Ethernet over copper, and fixed wireless solutions.¹¹ In fact, the “Commission has long recognized that wholesale and enterprise customers are ‘highly sophisticated’ actors, capable of making informed decisions ‘aware of the multitude of choices available to them.’ Such companies routinely have access to ‘expert advice about service offerings and prices,’ and ‘demand the most flexible service offerings possible.’”¹² This characterization is true today.

The term and volume discounts offered by price cap ILECs are subject to negotiation and both wholesale and retail customers are well qualified to negotiate rates and other terms. Special access customers benefit from these contracts as much as the service providers. In asking the Commission to restrict the volume of traffic for which ILECs may contract, CLECs would limit

¹⁰ See e.g., CenturyLink Comments at 20-29.

¹¹ See e.g., CenturyLink Comments at 29-32.

¹² CenturyLink Comments at 38 (footnotes and citations omitted).

customer choice for their own benefit.¹³ Their proposed solution would not promote the interests of consumers, and would be administratively unworkable, requiring the Commission to police customer traffic across diverse technologies. At this stage in the development of special access services, determinations about the need for ongoing regulation must take into account the substantial benefits that have been conferred on sophisticated customers from competition, including the considerable expansion of areas that are “contestable” in light of rising demand for special access services and the availability of new technologies.¹⁴

IV. ANY CONTINUING SPECIAL ACCESS REGULATION SHOULD BE NARROWLY TAILORED

Any Commission re-regulation of special access should be narrowly tailored to markets where the Commission determines that customers are harmed by specific market power concerns. If the data collected on the special access market reveals “that special access demand is not, as believed, relatively concentrated and that there are significant instances where pricing flexibility has been granted in portions of an MSA where there is meaningful levels of demand but not alternative supply, the Commission can use the data to explore whether to adopt triggers that have more limited geographic scope.”¹⁵ However, in the absence of specific evidence that competition is constrained in the ACS ILECs’ service areas, the Commission should grant

¹³ See generally *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Comments of Level 3 Communications, LLC, WC Docket No. 05-25, RM-10593, (filed Feb. 11, 2013) (“Level 3 Comments”) and *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Comments of BT Americas, CBeyond, Earthlink, Integra, Level 3 and TW Telecom, WC Docket No. 05-25, RM-10593, (filed Feb. 11, 2013) (“CenturyLink Comments”)

¹⁴ Verizon Comments at 9.

¹⁵ AT&T Comments at 19.

greater deregulation statewide. Customers would benefit from more widespread price competition in the state, and the Commission would retain regulatory intervention as a back-stop in cases of specific harm.

V. CONCLUSION

Alaska special access customers enjoy the benefits of robust competition for high-capacity services where pricing flexibility has been granted. This competition could be more widespread if pricing flexibility were extended statewide. While competitors argue for ILEC regulation that they deem in their own self-interest, the Commission should continue to base its policies on empirical data from specific geographic markets. The Commission need not find perfect competition as a prerequisite to further deregulation, nor should the absence of perfect competition trigger re-regulation. Rather, where the evidence indicates that market forces are working for the benefit of consumers, the Commission should employ restraint and allow the market to function.

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/s/

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